

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

STEVE ANCTIL, JR.)	
)	
Plaintiff,)	
)	
v.)	1:16-cv-00107-JAW
)	
COMMISSIONER JOSEPH,)	
FITZPATRICK, et al.)	
)	
Defendants.)	

**ORDER AFFIRMING RECOMMENDED DECISION AND ADDRESSING
OTHER PENDING MOTIONS**

Having performed a de novo review, the Court affirms the Magistrate Judge's recommended decision without objection in which the Magistrate Judge recommended that the Court deny a deputy warden's motion to dismiss an inmate's failure to protect and failure to train claim.

I. BACKGROUND

A. Recommended Decision

On February 24, 2016, Steve Anctil, Jr., an inmate at the Maine State Prison, filed a lawsuit pursuant to 42 U.S.C. § 1983 against a number of state of Maine officials, contending that the prison system, specifically the Maine State Prison, violated his civil rights by mishandling his grievances. *Compl.* (ECF No. 1). After Mr. Anctil twice amended the Complaint, the Magistrate Judge screened the Second Amended Complaint pursuant to 28 U.S.C. § 1915(e) and § 1915A and issued a recommended decision on October 24, 2016. *Recommended Decision After Screening Compl. Pursuant to 28 U.S.C. §§ 1915(e), 1915A* (ECF No. 36). In the recommended

decision, the Magistrate Judge recommended that the Court dismiss all of Mr. Ancil's claims, except the failure to protect/failure to train claim against Deputy Warden Ross. *Id.* at 19. On September 27, 2017, the Court affirmed in part and rejected in part the Magistrate Judge's recommended decision. *Order Affirming in Part and Rejecting in Part the Recommended Decision of the Magistrate Judge* (ECF No. 68). The Court allowed not only the failure to protect/train claim against Deputy Warden Ross to proceed, but also the legal mail claim against Commissioner Fitzpatrick, Warden Bouffard, and Warden Liberty. *Id.* at 13-14.

On October 5, 2017, Deputy Warden Troy Ross filed a motion to dismiss Mr. Ancil's Second Amended Complaint. *Mot. to Dismiss of Def. Troy Ross* (ECF No. 70). On November 8, 2017, Mr. Ancil responded to the motion to dismiss. *Obj. to Def. Ross's Mot. to Dismiss* (ECF No. 75). On December 15, 2017, the Magistrate Judge issued a recommended decision on Deputy Warden Ross' motion to dismiss. *Recommended Decision on Mot. to Dismiss of Def. Troy Ross* (ECF No. 80). In the recommended decision, the Magistrate Judge recommended that the Court deny the motion to dismiss. *Id.* at 6. Deputy Warden Ross has not objected to the Magistrate Judge's recommended decision.

B. Other Motions

After the filing of the Magistrate Judge's recommended decision, Mr. Ancil filed two additional motions that the Court addresses here: (1) a motion for scheduling order; and (2) a motion for an order directing Deputy Ross to file an

answer to the complaint.¹ Taking the second issue first, when Deputy Ross filed a motion to dismiss, the time period for filing an answer is generally delayed until fourteen days after notice of the court's ruling on a motion to dismiss. FED. R. CIV. P. 12(a)(4)(A). Therefore, once Deputy Ross filed his motion to dismiss, by rule, he was not required to file an answer. With the issuance of this decision, however, Deputy Ross will be required to file an answer within fourteen days of notice of this decision.

Regarding the Scheduling Order, although a Scheduling Order could have issued with the entry of appearance of counsel for each Defendant, it made more sense to resolve whether the case was going to proceed against Deputy Ross before issuing the Scheduling Order. Now that the motion to dismiss has been resolved, the Court anticipates that a proposed Scheduling Order will issue forthwith.

The Court dismisses both of these motions as now moot.

II. DISCUSSION

Despite the absence of objection on the part of Deputy Warden Ross to the recommended decision of the Magistrate Judge, the Court performed a de novo review of the Magistrate Judge's recommended decision, together with the entire record, and the Court concurs with the recommendation of the Magistrate Judge for the reasons set forth in his recommended decision. The Court AFFIRMS the recommended

¹ Mr. Anctil also filed a motion for preliminary injunction and temporary restraining order. *Mem. of Law in Support of Pl.'s Mot. for a TRO and a Prelim. Inj.* (ECF No. 83). On April 10, 2018, the Magistrate Judge issued a recommended decision on this motion. *Recommended Decision on Pl.'s Mot. for Inj. Relief* (ECF No. 88). On April 27, 2018, Mr. Anctil moved for an extension of time to file an objection to the recommended decision. *Pl.'s Mot. for Extension of Time to File Obj.* (ECF No. 89). His objection is now due on May 2, 2018. Assuming Mr. Anctil files an objection, the Defendants will have the right to respond. Therefore, the motion is not yet ripe for final adjudication.

decision of the Magistrate Judge and DENIES the Motion to Dismiss of Defendant Troy Ross (ECF No. 70).

The Court DISMISSES without prejudice Plaintiff's Request that Court Issue Standard Scheduling Order (ECF No. 81) and Plaintiff's Motion for Court Order Directing that Defendant Ross File an Answer to the Complaint (ECF No. 82).

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 1st day of May, 2018